IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24453 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANDAKINIBEN SUDHIRBHAI JOSHI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR DR BHATT for Petitioner(s) : 1,MR AS SAIYED for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/01/2006

ORAL JUDGMENT

1. Rule. Shri H.M.Prachchhak, learned AGP waives service of Rule on behalf of the respondents.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, City Division No.2, Ahmedabad dated 20.7.2001 passed under Section 32(A) of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.58,425/- plus Rs.250/- by way of penalty in all Rs.58,675/- with regard to the document No.2410 executed and presented before the Sub-Registrar, Ahmedabad dated 5.8.1998.

4. Shri D.R.Bhatt, learned advocate appearing on behalf of the petitioners has vehemently submitted that the impugned order dated 20.7.2001 is contrary to the provisions of Rule-4 of the Bombay Stamp (Determination of Market Value of Property) Rules; 1984 and as such, no particulars and/or reasons are

given by the authority for determining the valuation of the property in question at Rs.8,82,622/-. It is the contention on behalf of the petitioner that the impugned order dated 20.7.2001 was not served upon the petitioner as the petitioner was residing and serving at Vadnagar and the order might have been sent at Ahmedabad address. It is also further submitted that as such the impugned order came to be passed on the basis of the notice under Rule-4 of Rules; 1984 by which the petitioner was called upon to prove that the valuation of the property/land in question is at Rs.1,35,000/-. He has relied upon the judgment of this Court in case of *Budhabhai Merabhai Bharwad V. State of Gujarat reported* in (2005) 8 GHJ Page-374 : 2005 (2) GLR 1792. The learned advocate for the petitioner has also placed reliance on another decision of the learned Single Judge of this Court rendered in case of PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS. Reported in 2003 (1) GLR 454, wherein it is held that when the Chief Revenue and Controlling Authority passed an order in cyclostyled form wherein some gaps were filled up

and few sentences were added, it is an order passed without proper application of mind and not speaking order and the same cannot be sustained in eye of law.

5.Shri H.M.Prachchhak, learned AGP appearing on behalf of the respondents is not in a position to dispute that in the impugned order dated 20.7.2001 no particulars are given that on what basis the Deputy Collector has come to the conclusion that the valuation of the property in question is at Rs.8,82,622/-. The learned AGP for the Authorities is also not in a position to dispute that as such the controversy in question is directly covered by the judgment of this Court in case of ***Budhabhai Merabhai Bharwad and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.***(supra). However, the learned AGP has submitted that the valuation of the property in question is fixed on the basis of the Jantri.

6.Heard the learned advocates appearing on behalf of the parties.

7.I have gone through the order passed by the Deputy Collector. In the impugned order, no particulars and/or basis have been mentioned by the Deputy Collector that on what basis, he has come to the conclusion that the valuation of the property in question is at Rs.8,82,622/-. Nothing is on record to suggest that the petitioner has been served with any material relied upon by the Deputy Collector, if any, for ascertaining and/or fixing the valuation of the property in question at Rs.8,82,622/-. It also prima-facie appears that even the impugned order has been passed on the basis of the notice issued under Rule-4 of the aforesaid Rules and by which the petitioner was called upon to prove that the valuation of the property is at Rs.1,35,000/- and no more. This Court has remanded the matter to the Deputy Collector for deciding the same afresh after issuing proper notice under Rule-4 of Rules 1984 and after giving an opportunity to the petitioner and after providing the material upon which the Deputy Collector wants to rely to determine the

valuation of the property in question.

8. For the reasons stated above and for the reasons stated in the judgment of this Court in case of BHUDHABHAI MERABHAI BHARWAD and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.(supra), the petition is allowed partly. The impugned order passed by the Deputy Collector, Stamp Duty Valuation, City Division No.II, Ahmedabad dated 20.7.2001 is hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, City Division No.II, Ahmedabad for deciding the same afresh in accordance with law and on merits and after issuing proper notice under Rule-4 of the Rules of 1984 and after giving an opportunity to the petitioner and after supplying necessary material to the petitioner upon which the Deputy Collector proposes to rely while determining and/or ascertaining the valuation of the land in question. The said exercise to be done within a period of 6 months from today. It is, however, made clear that if any amount is already paid/deposited by the petitioner

pursuant to the order passed by the Deputy Collector, Stamp Duty Valuation, City Division No.II, Ahmedabad dated 20.7.2001 then in that case, the respondents are not required to refund the said amount at this stage and the same would be subject to the ultimate outcome of the proceedings on remand and the said amount be adjusted on the basis of the order that may be passed by the Deputy Collector.

9. It is required to be noted that initially the petitioner has submitted affidavit dated 26th December, 2005 explaining the delay. However, subsequently the petitioner has changed the averments in the further affidavit and it appears that the averments made in the earlier affidavit dated 26.12.2005 are not correct and / or accurate and affidavit seems to have sworn and filed by the petitioner without proper verification and therefore, the petitioner is liable to pay cost though the present special civil application is allowed on merits. Considering the facts and circumstances and since the learned advocate

appearing on behalf of the petitioner has also agreed to pay cost that may be quantified by this Court, looking to the facts and circumstances, this Court is inclined to quantify the cost at Rs.4,500/-. Accordingly, the petitioner is directed to deposit cost which is quantified at Rs.4,500/- with the Registry of this Court within a period of four weeks from today and on such deposit, Registry is directed to transmit the same to the Gujarat High Court Legal Aid Committee. If the amount of cost is not deposited by the petitioner within four weeks, the Office is directed to notify this matter before this Court for passing further order.

10.Rule is made absolute to the aforesaid extent accordingly.

Direct Service is permitted.

(M.R.SHAH, J.)

=kailash=